

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MARY D. SALMON
RESPONDENT
vs.**

**DIRECTOR OF REVENUE, STATE OF MISSOURI,
APPELLANT**

DOCKET NUMBER WD72920

DATE: JUNE 30, 2011

Appeal from:

The Circuit Court of Howard County, Missouri
The Honorable Gary G. Sprick, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Attorneys:

Brad L. Wooldridge, for Respondent

Trevor Bossert, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MARY D. SALMON, RESPONDENT

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI, APPELLANT

WD72920

Howard County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

The Director of Revenue appeals from a judgment entered in the Circuit Court of Howard County reinstating the driving privileges of Mary Salmon, whose privileges had been suspended following her arrest for driving while intoxicated.

REVERSED AND REMANDED.

Division Three holds:

- (1) The trial court erred in concluding, as a matter of law, that the certification of the highway patrolman that administered the breathalyzer test to Salmon was improper because it was issued by the Department of Health and Senior Services rather than the Missouri Department of Transportation and in determining that the breathalyzer results were unreliable as a result. Executive Order 07-05 on its effective date did not result in an immediate transfer of BAP-related authority from DHSS to MoDOT. The order merely authorized the process of the transfer, which was never fully implemented by the agencies, and control over the blood alcohol program was never transferred from DHSS to MoDOT due to subsequent executive orders rescinding Executive Order 07-05. Because the trial court erroneously rejected the breathalyzer results as a result of its misstatement and misapplication of the law, we must reverse the judgment and remand for further proceedings.

Opinion by Joseph M. Ellis, Judge

Date: JUNE 30, 2011

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